

## United States Postal Service

## § 959.20

### § 959.16 Presiding officers.

(a) The presiding officer shall be either an Administrative Law Judge qualified in accordance with law, or the Judicial Officer. The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause found, preside at the reception of evidence in proceedings upon request of either party.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he or she is required to rule;

(7) Order prehearing conferences for the purpose of settlement or simplification of issues by the parties;

(8) Order the proceeding reopened at any time prior to his or her decision for the receipt of additional evidence; and,

(9) Render an initial decision if the presiding officer is an Administrative Law Judge, which becomes the final decision of the Postal Service unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

### § 959.17 Evidence.

(a) Except as otherwise provided in these rules, the rules of evidence governing civil proceedings in matters not involving trial by jury in the District courts of the United States shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to insure a fair hearing. The presiding officer shall exclude irrelevant, immaterial or repetitious evidence.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received into evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) The written statement of a competent witness may be received into evidence provided that such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his or her opinion or knowledge concerning the matters in question.

(f) A party who objects to the admission of evidence shall make a brief statement of the grounds for the objection. Formal exceptions to the rulings of the presiding officer are unnecessary.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

### § 959.18 Subpoenas.

The Postal Service is not authorized by law to issue subpoenas requiring the attendance or testimony of witnesses or the production of documents. This does not affect the authority of the Chief Postal Inspector to issue subpoenas for the production of documents or information pursuant to § 233.1(c) of this chapter.

[39 FR 33213, Sept. 16, 1974, as amended at 56 FR 55825, Oct. 30, 1991]

### § 959.19 Witness fees.

The Postal Service does not pay fees and expenses for a respondent's witnesses or for depositions requested by a respondent.

### § 959.20 Depositions.

(a) Not later than 5 days after the filing of respondent's answer, any party may file an application with the Recorder for the taking of testimony by deposition. In support of such application, the applicant shall submit under oath or affirmation, a statement containing the reasons why such testimony should be taken by deposition, the time and place, and the name and

## § 959.21

## 39 CFR Ch. I (7–1–16 Edition)

address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(b) If the application be granted, the order shall specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken, and any other necessary information.

(c) Each deponent shall first be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers, together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the deposition officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form or relevancy or materiality of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing, any part or all of the deposition may be offered into evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received into evidence, it shall not be considered as a part of the record. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be

paid to witnesses and the deposition officer, and shall provide an original and one copy thereof for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States, or within a territory or possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of the deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the deposition officer, shall be present at the examination of the witness, which fact shall be certified by the deposition officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and cause the testimony to be reduced to writing in the witness' own words.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

### § 959.21 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the assigned presiding officer. Argument upon any matter may be excluded from the transcript by order of the presiding officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript shall be supplied to the parties by the reporter at rates not to exceed the maximum rates fixed by the contract between the Postal Service and the reporter. Copies of parts of the official record, other than the transcript, may be obtained by the respondent from the